

Exhibit A

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

**BLUE RIVER COMMUNICATIONS,
INC.**

Plaintiff,

V.

**THE BURLINGTON INSURANCE
COMPANY,**

Defendant.

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CIVIL ACTION NO. 4:21-cv-00418

INDEX OF MATERIALS ATTACHED TO NOTICE OF REMOVAL

No.	Date Filed or Entered	Document
A-1	N/A	List of Counsel of Record
A-2	N/A	State Court Docket Sheet
A-3	01/08/2021	Plaintiff's Original Petition
A-4	01/08/2021	Civil Case Information Sheet
A-5	01/08/2021	Request for Issuance of Service
A-6	01/12/2021	Plaintiff's Demand for Jury Trial
A-7	02/08/2021	Defendant The Burlington Insurance Company's Original Answer

Exhibit A-1

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

**BLUE RIVER COMMUNICATIONS,
INC.**

Plaintiff,

V.

**THE BURLINGTON INSURANCE
COMAPNY,**

Defendant.

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CIVIL ACTION NO. 4:21-cv-00418

LIST OF COUNSEL OF RECORD

COUNSEL FOR PLAINTIFF:

Christopher M. Cammack
7324 Southwest Freeway, Suite 1466
Houston, Texas 77074
cmc@cammack-law.com

Larry G. Longer
5005 W. 34th Street, Suite 206A
Houston, Texas 77092
lglonger@swbell.net

COUNSEL FOR DEFENDANT:

Wm. Lance Lewis, Attorney-in-Charge
Texas Bar No. 12314560
S.D. Bar No. 28635

Marcie L. Schout, of counsel
Texas Bar No. 24027960
S.D. Bar No. 34593

QUILLING, SELANDER, LOWNDS,
WINSLETT & MOSER, P.C., of counsel
2001 Bryan Street, Suite 1800
Dallas, Texas 75201
(214) 871-2100 (Telephone)
(214) 871-2111 (Facsimile)
llewis@qslwm.com
mschout@qslwm.com

Exhibit A-2

HCDistrictclerk.comBLUE RIVER COMMUNICATIONS INC vs. THE
BURLINGTON INSURANCE COMPANY

2/8/2021

Cause: 202101108 CDI: 7 Court: 133

APPEALS

No Appeals found.

COST STATMENTS

No Cost Statments found.

TRANSFERS

No Transfers found.

POST TRIAL WRITS

No Post Trial Writs found.

ABSTRACTS

No Abstracts found.

SETTINGS

No Settings found.

NOTICES

No Notices found.

SUMMARY**CASE DETAILS**

File Date	1/8/2021
Case (Cause) Location	
Case (Cause) Status	Active - Civil
Case (Cause) Type	Insurance
Next/Last Setting Date	N/A
Jury Fee Paid Date	1/12/2021

CURRENT PRESIDING JUDGE

Court	133 rd
Address	201 CAROLINE (Floor: 11) HOUSTON, TX 77002 Phone:7133686200
JudgeName	JACLANEL M. MCFARLAND
Court Type	Civil

ACTIVE PARTIES

Name	Type	Post Jdgm	Attorney
BLUE RIVER COMMUNICATIONS INC	PLAINTIFF - CIVIL		CAMMACK, CHRISTOPHER M.
THE BURLINGTON INSURANCE COMPANY	DEFENDANT - CIVIL		LEWIS, WILLIAM LANCE
THE BURLINGTON INSURANCE COMPANY	REGISTERED AGENT		

INACTIVE PARTIES

No inactive parties found.

JUDGMENT/EVENTS

Date	Description	Order Signed	Post Jdgm	Pgs Volume /Page	Filing Attorney	Person Filing
2/8/2021	ANSWER ORIGINAL PETITION			0	LEWIS, WILLIAM LANCE	THE BURLINGTON INSURANCE COMPANY
1/12/2021	JURY FEE PAID (TRCP 216)			0		
1/8/2021	ORIGINAL PETITION			0	CAMMACK, CHRISTOPHER M.	BLUE RIVER COMMUNICATIONS INC

SERVICES

Type	Status	Instrument	Person	Requested	Issued	Served	Returned	Received	Tracking	Deliver To
CITATION (INSURANCE COMMISSION)	SERVICE ISSUED/IN POSSESSION OF SERVING AGENCY	ORIGINAL PETITION	THE BURLINGTON INSURANCE COMPANY	1/8/2021	1/11/2021				73829550	E-MAIL
6320 QUADRANGLE DRIVE SUITE 300 CHAPEL HILL NC 27517										

DOCUMENTS

Number	Document	Post Jdgm	Date	Pgs
94302518	Defendant the Burlington Insurance Companys Original Answer		02/08/2021	5
93895758	PLAINTIFF'S DEMAND FOR JURY TRIAL		01/12/2021	1
93843749	PLAINTIFFS ORIGINAL PETITION		01/08/2021	3
-> 93843750	CIVIL CASE INFORMATION SHEET		01/08/2021	1
-> 93843751	REQUEST FOR ISSUANCE OF SERVICE		01/08/2021	1

Exhibit A-3

NO. _____

BLUE RIVER COMMUNICATIONS, INC. § IN THE DISTRICT COURT OF
 §
V. § HARRIS COUNTY, TEXAS
 §
THE BURLINGTON INSURANCE COMPANY § _____ JUDICIAL DISTRICT

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, BLUE RIVER COMMUNICATIONS, INC., Plaintiff, and files this Original Petition against Defendant, THE BURLINGTON INSURANCE COMPANY, and for cause of action, would show the following:

1. Plaintiff, BLUE RIVER COMMUNICATIONS, INC., is a Texas corporation doing business in Harris County, Texas. This lawsuit seeks monetary relief over \$200,000.00 but not more than \$1,000,000.00. Discovery shall be conducted under Level 2, TRCP 190.
2. Defendant, THE BURLINGTON INSURANCE COMPANY, is a foreign insurance company that does not maintain an agent for service of process in Texas, and therefore, may be served with Citation through the Commissioner of Insurance, Texas Department of Insurance, 333 Guadalupe, Austin, Texas 78701, who then shall forward a Citation and copy of Plaintiff's Original Petition to The Burlington Insurance Company, 6320 Quadrangle Drive, Suite 300, Chapel Hill, North Carolina 27517.
3. For cause of action, Plaintiff would show that it had in effect a Commercial General Liability Policy No. 957BW51763 with Defendant, covering the calendar period of May 18, 2019 to May 18, 2020. During the effective policy period, on or about October 22, 2019, Plaintiff was working as a subcontractor for Grayco, the general contractor, at an office building located at 1849 Kingwood Drive, Kingwood, Harris County, Texas.

4. Plaintiff is an installer of fiber optic cable. While performing its sub-contractor work for Grayco at the aforementioned office building, one of Plaintiff's employees accidentally ran over a sewer cap, breaking it, while operating an excavator. A trench was being dug outside the office building, in which to install fiber optic cables. Plaintiff was not doing any work that involved removal, burial, treatment or transport of "pollutants."

5. Water damage was sustained in the interior of the office building that was unrelated to the broken sewer cap outside the building. Rather, it was discovered that a shut off valve on one of the toilets in the women's rest room was not functioning properly, and an automatic toilet sensor was also not functioning properly, causing toilet water to keep running incessantly and overflowing the toilet seat. When plumbers came out to fix the problem, they further discovered blockage in the pipes consisting of mud, leaves, natural debris and hygiene products that should not have been flushed down the toilet to start with, such as baby wipes and tampons.

6. Plaintiff was required to pay \$142,513.39 from its own funds to Grayco, the general contractor on the job in question, as Grayco had to first pay the building owner, hence it required reimbursement from Plaintiff, its subcontractor. The actual damages consist of \$95,100.74 in repair costs and \$47,412.65 in water extraction/remediation expenses.

7. Plaintiff made a claim on its Commercial General Liability Policy No. 957BW51763 with Defendant, seeking payment for an insurable loss, which claim Defendant denied, based upon a policy exclusion that speaks to discharge, dispersal, seepage, migration, release or escape of pollutants. Plaintiff contends that the denial of coverage by Defendant is erroneous and constitutes a violation of Section 541.060, Texas Insurance Code.

8. Liability was reasonably clear, yet Defendant refused to pay the claim without conducting a reasonable investigation into the claim. A reasonable investigation would have led Defendant to

discern the facts stated in the preceding paragraphs. Plaintiff made a pre-lawsuit written demand upon Defendant, by letter dated May 18, 2020 sent by certified mail, return receipt requested, for payment of the \$142,513.39 in actual damages, and gave Defendant more than 61 days after receipt of the letter to pay said damages. Defendant has paid no portion of said monetary damages.

9. Plaintiff seeks Judgment against Defendant for a statutory violation of Section 541.060, Texas Insurance Code, and seeks \$142,513.39 in actual damages, plus three times that amount per Section 541.152, Texas Insurance Code, reasonable and necessary attorney's fees as determined on an hourly basis, and all court costs.

10. WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that the Defendant be cited to appear and answer herein, and that upon final adjudication thereof, Plaintiff be granted a Judgment against Defendant, for actual damages up to \$142,513.39, for treble damages of three times said amount, reasonable and necessary attorney's fees on an hourly basis, pre-judgment interest and post-judgment interest per the Texas Finance Code, all Court costs, and that the Court grant Plaintiff such other and further relief, to which Plaintiff shows itself justly entitled.

Respectfully submitted,

/s/ Chris Cammack
Christopher M. Cammack
State Bar No. 03682100
7324 Southwest Freeway, Suite 1446
Houston, Texas 77074
Ph. 713-960-1921/Fax 713-960-1922
E-mail: cmc@cammack-law.com

Larry G. Longer
State Bar No. 12541200
5005 W. 34th Street, Suite 206A
Houston, Texas 77092
Ph. 713-623-0499/Fax 713-622-3772
E-mail: lglonger@swbell.net

ATTORNEYS FOR PLAINTIFF

Exhibit A-4

CIVIL CASE INFORMATION SHEET

CAUSE NUMBER (FOR CLERK USE ONLY):

COUNTY (FOR CLERK USE ONLY):

STYLED **BLUE RIVER COMMUNICATIONS, INC. v. THE BURLINGTON INSURANCE COMPANY**

(e.g., John Smith v. All American Insurance Co.; In re Mary Ann Jones; In the Matter of the Estate of George Jackson)

A civil case information sheet must be completed and submitted when an original petition or application is filed to initiate a new civil, family law, probate, or mental health case or when a post-judgment petition for modification or motion for enforcement is filed in a family law case. The information should be the best available at the time of filing.

1. Contact information for person completing case information sheet:		Names of parties in case:		Person or entity completing sheet is:	
Name:	Email:	Plaintiff(s)/Petitioner(s):		<input checked="" type="checkbox"/> Attorney for Plaintiff/Petitioner	
Christopher M. Cammack	cmc@cammack-law.com	BLUE RIVER		<input type="checkbox"/> Pro Se Plaintiff/Petitioner	
Address:	Telephone:	COMMUNICATIONS, INC.		<input type="checkbox"/> Title IV-D Agency	
7324 Southwest Frwy., #1446	713-960-1921	Defendant(s)/Respondent(s):		<input type="checkbox"/> Other:	
City/State/Zip:	Fax:	THE BURLINGTON		Additional Parties in Child Support Case:	
Houston, Texas 77074	713-960-1922	INSURANCE COMPANY		Custodial Parent:	
Signature:	State Bar No:			Non-Custodial Parent:	
<i>Chris Cammack</i>	03682100			Presumed Father:	
[Attach additional page as necessary for all parties]					

2. Indicate case type, or identify the most important issue in this case (select only 1):					
Civil			Family Law		
Contract	Injury or Damage	Real Property	Marriage Relationship	Post-judgment Actions (non-Title IV-D)	
<input type="checkbox"/> Debt/Contract <input type="checkbox"/> Consumer/UTPA <input type="checkbox"/> Debt/Contract <input type="checkbox"/> Fraud/Misrepresentation <input type="checkbox"/> Other Debt/Contract: <input type="checkbox"/> Foreclosure <input type="checkbox"/> Home Equity—Expedited <input type="checkbox"/> Other Foreclosure <input type="checkbox"/> Franchise <input type="checkbox"/> Insurance <input type="checkbox"/> Landlord/Tenant <input type="checkbox"/> Non-Competition <input type="checkbox"/> Partnership <input type="checkbox"/> Other Contract:	<input type="checkbox"/> Assault/Battery <input type="checkbox"/> Construction <input type="checkbox"/> Defamation <input type="checkbox"/> Malpractice <input type="checkbox"/> Accounting <input type="checkbox"/> Legal <input type="checkbox"/> Medical <input type="checkbox"/> Other Professional Liability <input type="checkbox"/> Motor Vehicle Accident <input type="checkbox"/> Premises <input type="checkbox"/> Product Liability <input type="checkbox"/> Asbestos/Silica <input type="checkbox"/> Other Product Liability <input type="checkbox"/> List Product: <input type="checkbox"/> Other Injury or Damage:	<input type="checkbox"/> Eminent Domain/Condemnation <input type="checkbox"/> Partition <input type="checkbox"/> Quiet Title <input type="checkbox"/> Trespass to Try Title <input type="checkbox"/> Other Property: <input type="checkbox"/> Related to Criminal Matters <input type="checkbox"/> Expunction <input type="checkbox"/> Judgment Nisi <input type="checkbox"/> Non-Disclosure <input type="checkbox"/> Seizure/Forfeiture <input type="checkbox"/> Writ of Habeas Corpus—Pre-indictment <input type="checkbox"/> Other:	<input type="checkbox"/> Annulment <input type="checkbox"/> Declare Marriage Void <input type="checkbox"/> Divorce <input type="checkbox"/> With Children <input type="checkbox"/> No Children <input type="checkbox"/> Other Family Law <input type="checkbox"/> Enforce Foreign Judgment <input type="checkbox"/> Habeas Corpus <input type="checkbox"/> Name Change <input type="checkbox"/> Protective Order <input type="checkbox"/> Removal of Disabilities of Minority <input type="checkbox"/> Other:	<input type="checkbox"/> Enforcement <input type="checkbox"/> Modification—Custody <input type="checkbox"/> Modification—Other <input type="checkbox"/> Title IV-D <input type="checkbox"/> Enforcement/Modification <input type="checkbox"/> Paternity <input type="checkbox"/> Reciprocity (UIPSA) <input type="checkbox"/> Support Order <input type="checkbox"/> Parent-Child Relationship <input type="checkbox"/> Adoption/Adoption with Termination <input type="checkbox"/> Child Protection <input type="checkbox"/> Child Support <input type="checkbox"/> Custody or Visitation <input type="checkbox"/> Gestational Parenting <input type="checkbox"/> Grandparent Access <input type="checkbox"/> Parentage/Paternity <input type="checkbox"/> Termination of Parental Rights <input type="checkbox"/> Other Parent-Child:	
Employment	Other Civil		Probate & Mental Health		
<input type="checkbox"/> Discrimination <input type="checkbox"/> Retaliation <input type="checkbox"/> Termination <input type="checkbox"/> Workers' Compensation <input type="checkbox"/> Other Employment:	<input type="checkbox"/> Administrative Appeal <input type="checkbox"/> Antitrust/Unfair Competition <input type="checkbox"/> Code Violations <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Intellectual Property <input type="checkbox"/> Lawyer Discipline <input type="checkbox"/> Perpetuate Testimony <input type="checkbox"/> Securities/Stock <input type="checkbox"/> Tortious Interference <input type="checkbox"/> Other:		<input type="checkbox"/> Guardianship—Adult <input type="checkbox"/> Guardianship—Minor <input type="checkbox"/> Mental Health <input type="checkbox"/> Other:		
Tax	Probate/Wills/Intestate Administration		Probate & Mental Health		
<input type="checkbox"/> Tax Appraisal <input type="checkbox"/> Tax Delinquency <input type="checkbox"/> Other Tax:	<input type="checkbox"/> Dependent Administration <input type="checkbox"/> Independent Administration <input type="checkbox"/> Other Estate Proceedings		<input type="checkbox"/> Guardianship—Adult <input type="checkbox"/> Guardianship—Minor <input type="checkbox"/> Mental Health <input type="checkbox"/> Other:		

3. Indicate procedure or remedy, if applicable (may select more than 1):		
<input type="checkbox"/> Appeal from Municipal or Justice Court <input type="checkbox"/> Arbitration-related <input type="checkbox"/> Attachment <input type="checkbox"/> Bill of Review <input type="checkbox"/> Certiorari <input type="checkbox"/> Class Action	<input type="checkbox"/> Declaratory Judgment <input type="checkbox"/> Garnishment <input type="checkbox"/> Interpleader <input type="checkbox"/> License <input type="checkbox"/> Mandamus <input type="checkbox"/> Post-judgment	<input type="checkbox"/> Prejudgment Remedy <input type="checkbox"/> Protective Order <input type="checkbox"/> Receiver <input type="checkbox"/> Sequestration <input type="checkbox"/> Temporary Restraining Order/Injunction <input type="checkbox"/> Turnover

4. Indicate damages sought (do not select if it is a family law case):	
<input type="checkbox"/> Less than \$100,000, including damages of any kind, penalties, costs, expenses, pre-judgment interest, and attorney fees <input type="checkbox"/> Less than \$100,000 and non-monetary relief <input type="checkbox"/> Over \$100,000 but not more than \$200,000 <input checked="" type="checkbox"/> Over \$200,000 but not more than \$1,000,000	

Exhibit A-5



Marilyn Burgess

HARRIS COUNTY DISTRICT CLERK

201 Caroline | P.O. Box 4651 | Houston, Texas 77210-4651 | 832-927-3800 | www.hudistrictclerk.com

Request for Issuance of Service

CASE NUMBER: _____

CURRENT COURT: _____

Name(s) of Documents to be served: Plaintiff's Original Petition

FILE DATE: 01/08/2021 Month/Day/Year

SERVICE TO BE ISSUED ON (Please List Exactly As The Name Appears In The Pleading To Be Served):

Issue Service to: The Burlington Insurance Company

Address of Service: 6320 Quadrangle Drive, Suite 300

City, State & Zip: Chapel Hill, North Carolina 27517

Agent (if applicable) N/A

TYPE OF SERVICE/PROCESS TO BE ISSUED: (Check the proper Box)

- ☐ Citation ☐ Citation by Posting ☐ Citation by Publication ☐ Citations Rule 106 Service
☐ Citation Scire Facias Newspaper _____
☐ Temporary Restraining Order ☐ Precept ☐ Notice
☐ Protective Order
☐ Secretary of State Citation (\$12.00) ☐ Capias (not an E-Issuance) ☐ Attachment
☐ Certiorari ☐ Highway Commission (\$12.00)
☒ Commissioner of Insurance (\$12.00) ☐ Hague Convention (\$16.00) ☐ Garnishment
☐ Habeas Corpus ☐ Injunction ☐ Sequestration
☐ Subpoena
☐ Other (Please Describe) _____

(See additional Forms for Post Judgment Service)

SERVICE BY (check one):

- ☐ ATTORNEY PICK-UP (phone) _____
☐ MAIL to attorney at: _____
☐ CONSTABLE
☐ CERTIFIED MAIL by District Clerk

☒ E-Issuance by District Clerk
(No Service Copy Fees Charged)

Note: The email registered with EfileTexas.gov must be used to retrieve the E-Issuance Service Documents.
Visit www.hudistrictclerk.com for more instructions.

☐ CIVIL PROCESS SERVER - Authorized Person to Pick-up: _____ Phone: _____

☐ OTHER, explain _____

Issuance of Service Requested By: Attorney/Party Name: Christopher Cammack Bar # or ID 03682100

Mailing Address: 7324 Southwest Freeway, Suite 1446, Houston, TX 77074

Phone Number: 713-960-1921 (Office) / 713-870-6883 (Mobile)

Exhibit A-6

NO. 2021-01108

BLUE RIVER COMMUNICATIONS, INC. § IN THE DISTRICT COURT OF
 §
V. § HARRIS COUNTY, TEXAS
 §
THE BURLINGTON INSURANCE COMPANY § 133RD JUDICIAL DISTRICT

PLAINTIFF'S DEMAND FOR JURY TRIAL

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Plaintiff, BLUE RIVER COMMUNICATIONS, INC., who hereby demands a jury trial in the above-styled cause, per TRCP 216, and tenders herewith the jury fee of \$40.00.

Respectfully submitted,

/s/ Chris Cammack
Christopher M. Cammack
State Bar No. 03682100
7324 Southwest Freeway, Suite 1446
Houston, Texas 77074
Telephone: 713-960-1921
Telecopier: 713-960-1922
E-mail: cmc@cammack-law.com

Larry G. Longer
State Bar No. 12541200
5005 W. 34th Street, Suite 206A
Houston, Texas 77092
Telephone: 713-623-1921
Telecopier: 713-622-3772
E-mail: lglonger@swbell.net

ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

The foregoing item has not been served on anyone since the Defendant has not been served with Citation and has not otherwise answered or appeared herein.

/s/ Chris Cammack
Christopher M. Cammack

Exhibit A-7

CAUSE NO. 2021-01108

BLUE RIVER COMMUNICATIONS, INC.	§	IN THE DISTRICT COURT
	§	
Plaintiff,	§	
	§	
v.	§	OF HARRIS COUNTY, TEXAS
	§	
THE BURLINGTON INSURANCE	§	
COMPANY,	§	
	§	
Defendant.	§	133RD JUDICIAL DISTRICT

**DEFENDANT THE BURLINGTON INSURANCE COMPANY'S
ORIGINAL ANSWER**

Defendant The Burlington Insurance Company ("Defendant" or "TBIC") files its Original Answer to Plaintiff's Original Petition (the "Petition") and hereby states as follows:

I.

GENERAL DENIAL

Defendant denies all and singular the allegations contained in the Petition and demands strict proof thereof.

II.

ADDITIONAL DEFENSES

Defendant pleads the following matters in defense, should the same be necessary:

1. Defendant specifically denies that all conditions precedent to Plaintiff's claims for recovery have occurred or been met.

2. Coverage is precluded by the Total Pollution Exclusion (IFG-G-0086 03 17) which states as follows:

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

TOTAL POLLUTION EXCLUSION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

A. Exclusion **f.** under Paragraph 2. **Exclusions of Section I – Coverage A – Bodily Injury And Property Damage Liability Coverage** is replaced with the following:

This insurance does not apply to:

f. Pollution

- (1) “Bodily injury” or “property damage” caused by or arising directly or indirectly, in whole or in part out of the actual, alleged or threatened discharge, dispersal, disposal, seepage, migration, release or escape of “pollutants” at any time.”
- (2) Any loss, cost or expense caused by or arising directly or indirectly, in whole or in part out of any:
 - (a) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean p, remove, contain, treat, detoxify, or neutralize, or in any way respond to, or assess the effects of “pollutants”; or
 - (b) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, o in any way responding to or assessing the effects of, “pollutants”.

This exclusion applies whether or not such “pollutants” have any function in your business, operations, premises, site or location or constitutes “your product” or is a component of “your products” or products you use.

“Pollutants” mean any solid, liquid, gaseous, bacterial, fungal, or thermal substance or material, that is harmful, toxic or hazardous to persons, plants, animals, wildlife or other living organisms or can cause contamination to property, air, land or water, which includes but is not limited to smoke, vapor, soot,

fumes, acids, alkalis, chemicals, mineral spirits, solvents, insecticides, pesticides, fungicides, motor fuels, gasoline, diesel fuel, motor oil or any other petroleum based product, brake fluid, transmission fluid, antifreeze, lead paint, or other lead containing substances, carbon monoxide fumes, paint fumes, adhesive or glue fumes, asbestos, silica, human or animal sewage and waste. Waste includes but is not limited to materials to be recycled, reconditioned or reclaimed. A “pollutant” also includes any substance or material listed, identified or described in any municipal, state or federal environmental statute or regulation that applies to the production, shipping, handling, storage, use, processing, recycling or disposal of such substance or material.

3. Coverage is precluded by the Fungi or Bacteria Exclusion (CG 21 67 12 04)

which states:

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

FUNGI OR BACTERIA EXCLUSION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

- A. The following exclusion is added to Paragraph 2. **Exclusions of Section I – Coverage A – Bodily Injury and Property Damage Liability:**

2. Exclusions

This insurance does not apply to:

Fungi Or Bacteria

- a. “Bodily injury” or “property damage” which would not have occurred, in whole or in part, but for the actual, alleged or threatened inhalation of, ingestion of, contact with, exposure to, existence of, or presence of, any “fungi” or bacteria on or within a building or structure, including its contents, regardless of whether any other cause, event, material or product contributed concurrently or in any sequence to such injury or damage.

- b. Any loss, cost of expenses arising out of the abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, remediating or disposing of, of in any way responding to, or assessing the effects of “fungi” or bacteria, by any insured or by any other person or entity.

This exclusion does not apply to any “fungi” or bacteria that are, are on, or are contained in, a good or product intended for bodily consumption.

“Fungi” means any type of form of fungus, including mold or mildew and any mycotoxins, spores, scents or byproducts produced or released by fungi.

4. Coverage is precluded by the no voluntary payment provision of the policy which provides: “No insured will, except at the insured’s own costs, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.”

5. To the extent Plaintiff was contractually obligated to pay for the loss at issue, the Contractual Liability exclusion precludes coverage.

6. Plaintiff has failed to state a claim for which relief may be granted.

7. The policy is subject to the deductibles and the limits of insurance stated therein.

WHEREFORE, PREMISES CONSIDERED, Defendant The Burlington Insurance Company prays that Plaintiff take nothing by this suit and that Defendant goes hence and recover costs on its behalf expended.

Respectfully submitted,

/s/ Wm. Lance Lewis

WM. LANCE LEWIS

Texas Bar No. 12314560

MARCIE L. SCHOUT

Texas Bar No. 24027960

**QUILLING, SELANDER, LOWNDS,
WINSLETT & MOSER P.C.**

2001 Bryan Street, Suite 1800

Dallas, Texas 75201

(214) 871-2100 (Telephone)

(214) 871-2111 (Facsimile)

llewis@qslwm.com

mschout@qslwm.com

**ATTORNEYS FOR DEFENDANT THE
BURLINGTON INSURANCE COMPANY**

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing pleading has been furnished to all counsel of record via the TexFile system, with a courtesy copy via electronic mail, in accordance with the Texas Rules of Civil Procedure, this 8th day of February 2021 at the addresses indicated below:

Christopher M. Cammack, Esq.
7324 Southwest Freeway, Suite 1446
Houston, Texas 77074
mcm@cammack-law.com

Larry G. Longer, Esq.
5005 W. 34th Street, Suite 206A
Houston, Texas 77092
lglonger@swbell.net

/s/ Wm. Lance Lewis

Wm. Lance Lewis